

Nuclear Regulatory Commission

§ 76.70

shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with paragraph (a) of this section. These revisions must be submitted before April 15 of each calendar year, or at a shorter interval as may be specified in the certificate. If a renewal application for a certificate is filed in accordance with § 76.36 of this part, the revisions shall be incorporated into the application.

(c) The Corporation shall maintain records of changes in the plant and of changes in the programs, plans, policies, procedures and operations described in the approved application, and copies of the safety analyses on which the changes were based. The records of plant changes must be retained until the end of the duration of the lease. The records of changes in programs, plans, policies, procedures, and operations and copies of the safety analysis on which the changes were based must be retained for a period of 2 years.

(d) The Corporation may at any time apply under § 76.45 for amendment of the certificate to cover proposed new or modified activities not permitted by paragraph (a) of this section.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6670, Feb. 12, 1997]

§ 76.70 Post issuance.

(a) *Amendment of certificate terms and conditions.* The terms and conditions of a certificate of compliance or an approved compliance plan are subject to modification by reason of amendments to the Act, or by reason of rules, regulations, or orders issued in accordance with the Act.

(b) *Revocation, suspension, or amendments for cause.* A certificate of compliance or a compliance plan may be revoked, suspended, or amended, in whole or in part for:

(1) Any material false statement in the application or statement of fact required by the Commission in connection with the application;

(2) Conditions revealed by the application, or any report, record, inspection, or other means which would warrant the Commission to refuse to grant a certificate or approve a compliance plan on an original application; and

(3) Violation of, or failure to observe any of, the applicable terms and conditions of the Act, or the certificate of compliance, the compliance plan, or any rule, regulation, or order of the Commission.

(c) *Procedures governing amendment, revocation, suspension, or imposing requirements by order.* (1) Except in cases of willfulness or those in which the public health interest, common defense and security, or safety requires otherwise, no certificate of compliance or compliance plan may be amended, suspended, or revoked unless before the institution of proceedings therefore, facts or conduct which may warrant the action must have been called to the attention of the Corporation in writing and the Corporation shall have been accorded an opportunity to demonstrate or achieve compliance with the lawful requirements related to such action.

(2) The Commission may institute a proceeding to modify, suspend, or revoke a certificate or take such other action as may be proper by serving on the Corporation or other person subject to the jurisdiction of the Commission an order that will:

(i) Allege the violations with which the Corporation or other person subject to the Commission's jurisdiction is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed;

(ii) Provide that the Corporation or other person who is charged must, and other interested persons may, submit a written response to the order within a reasonable period after publication of the order as may be specified in the order;

(iii) Specify the issues for resolution should the order be contested;

(iv) State the effective date of the order; if the Commission finds the public health, common defense and security, or safety, so require or that the violation or conduct causing the violation is willful, the order may provide that the proposed action be immediately effective pending further order and include a statement of reasons for making the proposed action immediately effective;

(v) Provide that the Commission may make a final decision after consideration of the written submissions or may in its discretion adopt by order, upon the Commission's own initiative or at the request of the Corporation or an interested person, further procedures for a hearing of the issues before making a final enforcement decision. These procedures may include requirements for further participation in the proceeding, such as the requirements for intervention under Part 2, subparts C, G or L of this chapter. Submission of written comments by interested persons do not constitute entitlement to further participation in the proceeding. Further procedures will not normally be provided for at the request of an interested person unless the person is adversely affected by the order.

(3) The Corporation or other person to whom the Commission has issued an immediately effective order may, in addition to submitting a written response, move the Commission to set aside the immediate effectiveness of the order on the ground that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on. The NRC staff shall respond within 5 days of the receipt of the motion.

(d) *Notice of violation.* (1) In response to an alleged violation of any provision of the Act or NRC regulations or the conditions of a certificate, compliance plan, or an order issued by the Commission, the Commission may serve on the Corporation or other person subject to the jurisdiction of the Commission a written notice of violation. A separate notice may be omitted if an order or demand for information pursuant to this section is issued that otherwise identifies the apparent violation. The notice of violation will concisely state the alleged violation and will require the Corporation or other person subject to it, within twenty (20) days of the date of the notice or other specified time, to submit a written explanation or statement in reply including:

(i) Corrective steps which have been taken by the Corporation or other person and the results achieved;

(ii) Corrective steps which will be taken; and

(iii) The date when full compliance will be achieved.

(2) The notice may require the Corporation or other person subject to the jurisdiction of the Commission to admit or deny the violation and to state the reasons for the violation, if admitted. It may provide that, if an adequate reply is not received within the time specified in the notice, the Commission may issue an order or a demand for information as to why the certificate should not be modified, suspended, or revoked or why such other action as may be proper should not be taken.

(e) *Additional information.* At any time after the granting of a certificate of compliance or approval of a compliance plan, the Commission may require further statements from the Corporation, signed under oath or affirmation, in order to enable the Commission to determine whether the certificate or approved compliance plan should be modified or revoked.

[59 FR 48960, Sept. 23, 1994, as amended at 69 FR 2281, Jan. 14, 2004]

§ 76.72 Miscellaneous procedural matters.

(a) The filing of any petitions for review or any responses to these petitions are governed by the procedural requirements set forth in 10 CFR 2.302(a) and (c), 2.304, 2.305, 2.306, and 2.307. Additional guidance regarding the filing and service of petitions for review of the Director's decision and responses to these petitions may be provided in the Director's decision or by order of the Commission.

(b) The Secretary of the Commission has the authority to rule on procedural matters set forth in 10 CFR 2.346.

(c) There are no restrictions on ex parte communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of the regulatory process, with the exception that the rules on ex parte communications and separation of functions set forth in 10 CFR 2.347 and 2.348 apply to proceedings under 10